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TRANSCRIPT OF RECORD

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IN THE

Supreme Court of the United States

October Term, 1948

No. 263

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 870 Brannan Street, San Francisco

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No. 11599

United States
Circuit Court of Appeals
For the Ninth Circuit

SAMUEL MORRIS WIXMAN, also known as SHULIM WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 870 Brannan Street, San Francisco 7-10-47—60

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ORIGINAL
(To be retained by Clerk of Court)

UNITED STATES OF AMERICA

No. 1286536

PETITION FOR NATURALIZATION

To the Honorable the DISTRICT Court of THE UNITED STATES of LOS ANGELES, CALIF.

This petition for naturalization, hereby made and filed pursuant to Section [illegible] of the Nationality Act of 1940, respectfully shows:

(1) My full, true, and correct name is SHULIM WIZMAN

(2) My present place of residence is 870 N. Kenmore, Los Angeles, 27, Cal. (3) My occupation is Research worker Social Service &

(4) I am 45 years old. (5) I was born on March 25, 1900 in Kiev, Russia

(6) My personal description is as follows: Sex male; color white, complexion fair, color of eyes hazel, color of hair brn, height 5 ft 8 in, weight 130 pounds; visible distinctive marks none; race white; present nationality none-last Russia

(7) I am married; the name of my wife or husband is Myrtle; we were married on June 25, 1927 at Cupertino, Calif.; he or she was born at Minneapolis, Minn, on June 3, 1905

entered the United States at [illegible] on [illegible] for permanent residence in the United States, and now resides at with me and was naturalized on [illegible] at [illegible]

certificate No. [illegible]; or became a citizen by [illegible]

(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.

(7b) (If petition is filed under Section 319, Nationality Act of 1940) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and such husband or wife is regularly stationed abroad in such employment. I intend in good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have 1 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Myrsam(m) 2-22-28-Calif; res. with me

(9) My last place of foreign residence was Kiev, Russia (10) I emigrated to the United States from Kiev Russia

(11) My lawful entry for permanent residence in the United States was at New York, N.Y. under the name of Scholem Wiseman on July 16, 1911 on the SS Grant President as shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(13) (Declaration of intention not required) (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the United States of America for the term of 1 year at least immediately preceding the date of this petition, to wit: since July 16, 1911 (19) I have now heretofore made petition for naturalization number 94,859 on Dec. 18, 1941 at Los Angeles, Calif. in the U.S. District Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: dismissed at petitioner's request and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said declaration into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two witnesses as required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to SAMUEL MORRIS WIZMAN

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name. SO HELP ME GOD.

bms

X Shulim Wizman
(full, true, and correct signature of petitioner without abbreviation)

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The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Herbert Ganahl, my occupation is Attorney

I reside at 2142 W. 78th St. Los Angeles, Calif.
(Number and street) (City or town) (State)

My name is Lester W. Roth, my occupation is Attorney

I reside at 621 S. Hope St. Los Angeles, Calif.
(Number and street) (City or town) (State)

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Shulim Wyman, the petitioner named in the petition for naturalization of which this affidavit is a part, since 9-1-44 (Month) (Day) (Year), to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

Herbert Ganahl (Signature of witness)

Lester W. Roth (Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at Los Angeles, Cal. this 25th day of Septe, Anno Domini 19..47, hereby certify that Certificate of Arrival No. 23 108035 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, has been by me filed with, attached to, and made a part of this petition and affidavit.

SEAL OF THE U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

By ..... Deputy Clerk.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: SO HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

Shulim Wyman
(Signature of petitioner)

Sworn to in open court, this ..... day of ....., A. D. 19.....

..... Clerk.

By ..... Deputy Clerk.

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. ..... of List No. ..... and Certificate No. ..... issued.

Petition denied: List No. 1 - 2-5-47

Reason

Failure to establish attachment to the principles of the Constitution and favorable disposition to the good order and happiness of the United States.

Denied 2-7-47 See Order in file.

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GOVERNMENT'S EXHIBIT No. 1

Economic Trends

Mr. Chairman and Friends:

Abraham Lincoln, when taunted on his homeliness by a political opponent during a debate, thought for a moment and then remarked,

"I know I am no beauty, by gar;
There are many more handsome, by far.
But my face—I don't mind it,
For I am behind it.
It's those in front that I jar."

If I am permitted to paraphrase Lincoln's answer, I would say that, if some ideas I shall bring out are somewhat unconventional, unorthodox by far, I, too, do not mind them, for I am squarely behind them. I do hope you out there in front they will not jar.

There seems to prevail a mistaken notion that anyone who entertains and expresses—no matter how softly—any thoughts and principles other than those in support of the existing order, is ipso facto unpatriotic. From the outset may I say that the speaker yields to no one in the matter of loyalty to and love for this country, these United States of America. However, the country have in mind, may perhaps be to a degree different from that which some have been accustomed. The land I have in mind is one which beckoned to me some years ago as the land of opportunity for all, a land of plenty, one, the resources of which were sufficient to wipe

Government's Exhibit No. 1—(Continued)

out needs, hardships, and poverty for all honestly willing to work; a land in which cooperation and social-mindedness could create all necessities and comforts for all. On the other hand, if disloyal I am so only to a land in which want stalks in the homes and streets of cities and towns, in villages, on farms, on the highways and byways. I suffer but little love for a land that sets up upon and pedestal and accords a place of honor to those who are ever ready to brand everyone else an enemy of the country, while themselves fail to show much faith in the Bill of Rights, in the Constitution, or even in some of the more fundamental laws of humanity, decency and fairness.

I am about to offer to you a straight-forward examination of trends of thought that seem to warrant special attention because of their significance in present day economic life. The ideas to be presented are not elaborately detailed. They are not very statistical. What is intended is simply to analyze and evaluate these ideas.

My introductory words assumed the likelihood of differences of opinion in our midst. Any discussion of economic problems leads inevitably into the troubled waters of controversy. The question whether a lecturer, a teacher, or a writer should or should not "take sides" in a controversial issue is a very mooted one. Personally I believe that one should "take sides". Why? Because I am of the opinion that an honest and careful investigation of economic trends is bound to give the investigator

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Government's Exhibit No. 1—(Continued)

a fairly definite conclusion. The students, the audience, the readers, then, are entitled to know what the conclusion is and the logic on which it is based. Experience in lecturing and writing has proven that this practice of arriving at and stating conclusions is sound. A conclusion definitely formulated challenges the listener or the reader. It forces him into agreement or disagreement with the author, which in itself helps to develop logical argument in support of whatever stand he takes. This, again, results in defense or attack on the part of those who take an opposing stand. And it is out of such clashes of conflicting ideas that there comes that development, that growth which is the very core of knowledge, the very life-blood of education.

In these days of necessary and inevitable social change it is importnat that we all remain calm and approach everything with scientific detachment.

The rapid development of our life in its numerous phases compels a constant restatement of the philosophies and theories underlying this development. This restatement, even in its latest revision, is bound to lag [6] more or less behind the reality of the moment which the restatement attempts to explain, because, by the time those who seek to explain and clarify the discovered new reality, the latter has partly ceased to be. Moreover, a still newer reality has taken its place. This mobility, this flux of the affairs of mankind, to me at least, is as natural as the ever-changing trend of things

Government's Exhibit No. 1—(Continued)

in Nature in general. Are we fearsome of describing and accounting for changes that take place in the inanimate, plant or animal world? No. Are we intolerant of new theories, facts, concepts in those fields of life? No. Is the world that concerns humans a part of Nature as a whole? Yes. Obviously, then, we humans must tolerate, no less, new philosophies that purport to describe changes in the realm of activities of humans. In particular, must we give a free hand to those whose object it is to interpret the cause and effect of those changes.

Now, if you will bear with me, suppose, for a few moments, we arrive at a perspective of this world of humans we call society. Suppose, again, we examine, even hurriedly this particular society we know so well—our United States. Examining it we will be examining the world at large. For does it not typify to a great degree the world?

Our country is probably the richest country in the world. In fact, we need not even qualify our statement with "probably." It is the wealthiest region right now—not potentially. It is the richest because it had in abundance at least three fundamental factors so essential for the creation of things —tangible and intangible—that would make for general progress and universal well-being. Those three necessary factors are:

1. Natural resources
2. The human agency
3. Tools or machine equipment

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Government's Exhibit No. 1—(Continued)

Let us examine very briefly each of those in turn:

The first, Natural Resources, consists of land, soil, of which there abounds in the United States to the extent of roughly about 2 billion acres, only 1/3 of which is used presently for varied crops or for pasture; ¼ is still covered with forests; and less than 1/5 being still characterized by desert vegetation, which type of land, however, is gradually reclaimed by irrigation. These same 2 billion acres contain, in varying amounts and proportions, no less than 1,500 mineral substances, oil, gas, power of one sort or another, food, actual and potential.

The Human Factor, totaling roughly about 125,000,000, we are told, could be used in productive capacity to the extent of about 1/3 of its numbers.

Now, as to the third fundamental agency of a changing, productive society; the tools, the machine or mechanical outlay. Scientists, engineers, technologists tell us that right at this moment we have enough of modern machinery to permit every farmer—were he to utilize the tools at his disposal, or which he could have, if he were able to afford them—to produce enough to feed twenty people. We are told by the same scientists and engineers that our industries, such as the shoe industry, are now making use of their machine equipment to only between 25-50% of their maximum efficiency. That is, that industries today, with no additional or new machines, could still produce, in some cases, 50% more commodities than they are producing. We are assured that with only a few hours of work

Government's Exhibit No. 1—(Continued)

daily, a few, not 8, nor 10, nor 12, each person can earn an annual income of between $6,000-$20,000. If brief, that given the factors needed for the creation of goods for the use of man, there should be production and earnings in sufficiency for all.

What, however, is the actual state of affairs? Let us turn to no other source for our information that the periodic reports and bulletins issued by the different departments of the United States Government. Surely these should be regarded as authentic.

On the basis of such government estimates there are today, conservatively speaking, still some 12,000,000 able-bodied men and women begging for work at [7] almost any price. And they are still denied that opportunity. They asked to be permitted to make clothing for those whose clothes are threadbare, or for those who have none. (The growth of the Nudist fad of late years seems to me as no mere accident.) They begged to be allowed to create shoes for those the soles of whose shoes are worn-out and full of holes; for those who are down-in-their-heels. They ask for permission to tear down the smelly, slimy, grimy tenement houses of our slums, dwellings which have become little else than disease-infested, vermin-beleagered fire-traps. They ask to errect in their stead dwellings fit for man of the 20th century to live in. These willing-and-able-to-work unemployed literally beg to be allowed to raise enough food for the hungry and famished. But all of this they are denied. And as a result millions still go about in worn-out, ragged clothing; millions

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Government's Exhibit No. 1—(Continued)

still are immured in dilapidated, unwholesome homes; millions still walk about underfed, nearly starved. And all this continues while the goods so sorely needed by these millions, and which goods were created by these self-same millions in times when it was still profitable to create goods, these goods lie in wharehouses, in bins, on the shelves. And these goods in their silence cry out eloquently for a consumer, but in vain.

Let us turn over the pages of this record of misery and stop for a moment at another picture—one that strikes much closer to home. Again the government bulletins divulge an unforgettable scene. Leaflet number 44 of the Department of Interior gives us an insight into what is going on in the field of education—a field to which this democracy of ours has ever been ready to point with pride, to hold up as a model. This leaflet, entitled "The Deepening Crisis in Education", states that during one year, despite laws providing for universal compulsory education, close to 3,000,000 children between the ages of 6 to 15 were not in school. Why? Not enough schoolrooms? No. Many a little red schoolhouse, with its window shutters and doors closed, looked longingly down on the youngsters running wildly about. Well, perhaps, not enough teachers to care for these 3,000,000 schoolless children. On the basis of 1930 normal classroom population it would take some 100,000 teachers to care for and instruct these youngsters. Where shall we get this many teachers in this crisis, you may ask? Where? But wait. The

Government's Exhibit No. 1—(Continued)

same leaflet, eminating from Harold L. Ickes, secretary of the Department of Interior, continues to tell us that there were during that year in the neighborhood of 250,000 unemployed teachers, (over 80,000 in California alone) all certificated, all trained and tried, many of them with many years of experience behind them—all ready to teach at that very moment. And what is even more remarkable, let us have a glimpse at the salaries of those who were still employed. 1 out of 4 teachers on a job received a salary of less than $750 a year. 84,000 teachers in rural districts, earned incomes of less than 450 dollars a year. Think of it, less than 38 dollars a month. 1 out of every 13 negro teachers earned a monthly salary of $25 or less. 1 out of every 4 teachers in rural Missouri taught school during that year from 1 to 4 months without pay. Do we have to repeat the stories of teachers' plight in Chicago, in Detroit? In the face of these facts, we have the United States Chamber of Commerce striking at every public school with a 20-point program, every point of which spelled curtailment of educational opportunities. And a ranking officer of the Dep't of Education, after travelling leisurely about in fascist countries like Germany and Italy, suggested, on his return, the following educational proposals:

1. Close one out of every five high schools.
2. Send four out of every five children out on the streets or into jobs now held by grown men and women.

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Government's Exhibit No. 1—(Continued)

3. Make the tuition rates so high that only children of the rich would be admitted.
4. Stop the mass movement into colleges.

Does this bespeak of universal compulsory education? Is this offering equal educational opportunities for all?

Of course, there are many who say that these are not normal times, that we are in a depression now. That Capitalism is all right, that we better give it a chance to get on its feet again, that even now it is already on the way to recovery; in fact, that prosperity is just around the corner. Let us not be fooled again. Personally, I am somewhat impatient with such contentions. [8] In fact, I agree heartily with President Roosevelt who remarked, "The overwhelming majority of our population has little patience with that small minority which vociferates today that prosperity has returned, that wages are good, that crop prices are high and that government should take a holiday."

Even if we assume that a capitalist revival could be stimulated and affected by inflation and deflation schemes, by public construction schemes, or by what-have-you schemes, it would still have in it the inescapable capitalist tendency to generate a renewed depression. For the root fault of capitalism is "it leads, as soon as it becomes prosperous, to a self-destructive mal-distribution of income. The difficulty is not that there is not enough purchasing power to buy the available supply of goods, but that

Government's Exhibit No. 1—(Continued)

this purchasing power is wrongly distributed—too much to the rich and too little to the general body of wage workers." In the course of economic growth we have had many periods of so-called prosperity. However, the trouble was that the wealth of this mis-named prosperity was not equitably distributed among the millions of our country. Much too much profit went back to build new factories and too little found its way back to the people to buy the products from the factories we already had. This situation was bad both ways. Too much was produced and too little was consumed, in proportion as the margin between the value of goods produced and the value of goods consumed widened. As a result too great a share of prosperity went to too few people. These few amassed more and more because a person with a million dollars does not actually consume very much more than a person with a thousand dollars. After all, even the very very rich do not buy, let us say, $50.00 worth of ham and eggs for breakfast, which means that a partial solution to the ills besetting us is, to quote even General Hugh Johnson, "to find a way to let everybody have half a dollar's worth of ham and eggs." A boom under capitalism, which does not generate a new depression is impossible, since it is the inherent capitalist tendencies and contradictions that lead unavoidably to the logical slumps. The economic history and record of the economic growth of any and of all the industrially developed states proved this beyond a shadow of a doubt. Capitalism, then,

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under those circumstances, fails to provide the essentials for the system which is hopes will keep it alive.

In consequence, if the strongest card of the defenders of capitalism has always been that, despite all of its undenied inperfections and injustices, it does somehow on the whole contrive to "deliver the goods", so to speak, then surely it stands condemned and convicted by the arguments of its own apologists. For that is just what today capitalism is most obviously failing to do. In the face of an unprecedently rapid advance in productive power in both industry and agriculture—which ought to by all rules and regulations of the plainest common sense, yield to every person of every community a rapidly rising standard of life—one finds the wheels of production slowed down to a dangerous degree, and unemployment and distress existing on a scale unknown to living memory. Must it take, then, [9] much intelligence, to see that there must be something radically wrong with a system which holds that it is more beneficial to maintain millions upon millions of people in idleness than to set them to useful work? With the spectacle of economic and political futility, who can respect a system which, having the means to produce abundance, can find no way of distributing the wealth tha ts iits for the taking? What serious, sober, thinking or sane human being can rest satisfied with capitalism as it is right now? In its attempt to hold on for dear life, with its periodic booms and depressions, de-

Government's Exhibit No. 1—(Continued)

pressions and booms, for the sake of the fiction of prosperity, the system reminds me of the inmate in the insane asylum who, when asked by the examining psychiatrist as to why he continuously beat his head on the cell wall, replied, "I beat my head periodically on the wall because I enjoy the sensation when I stop."

This picture as painted, is the direct and inescapable result of the logic of events of capitalism of the 19th century and before. That capitalism was by its very nature, one without a plan. At least not a conscious plan, for whatever planning there may have been in it, was done by a mysterious power—an "invisible hand", as Adam Smith called it. Now, it became nothing short of blasphemy to attempt to interfere with the operation of that "invisible hand", and as long as it functioned somewhat satisfactorily for some, its workings were not questioned. But today a growing skepticism has put economic faith in Providence at a discount. As a result, for some years past one has been hearing of a strange new economic doctrine—a capitalist planned economic system. The advocates of this idea are "those from the capitalist ranks who have become influenced in part by the great growth of trusts and combines and partly by the example of the Five Year Plans elsewhere. Both, they say, have established an ordered system of production."

But capitalist planning is highly paradoxical, because planning involves the elimination of private enterprise and competition in the matter of kinds

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Government's Exhibit No. 1—(Continued)

of goods produced, price to be charged, the share that is to go to the producer, the amount to be set aside for capital accumulation, and so forth. Now, are not the eliminated elements of private enterprise and competition the very props of capitalism, which if knocked from under would carry with them the system itself? And as long as industries are to be carried on with private profit as the incentive for production, the state will be compelled to guarantee the capitalist's profits, if it undertakes to direct its business for him. This in itself will destroy the incentive for efficient production, will tend to disrupt the capitalist system. In the end it will be exposed to the same dangers which face it today —unless it can "reconcile itself to altering the distribution of income drastically in favor of the wage-earning class. If it fails to do so, it will go down before the sheer weight of the poverty-stricken. If it does distribute incomes more equitably, the wage-earning class, given added power through augmented income, will insist on taking over the control of the economic system for itself." State capitalism under those conditions will find itself between the proverbial Scylla and Charybidis, between wrack and ruin. We cannot consequently, build up much of a case for state capitalism. [10]

With state capitalism out of the picture, what then is to take its place? Many suggest that the answer lies in one of two contending, underlying philosophies, which, thrown into the arena of today, are fighting for acceptance. These two under-lying

Government's Exhibit No. 1—(Continued)

philosophies are, individualism and collectivism, which in their latest form we may designate as fascism and socialism respectively. Interested as we are in today primarily let us take the newest arrivals into the laboratory and investigate the makeup and potentialities and promises of each.

What is the fascism? Well, fascism, whether in brown, black, silver, khaki or gold shirts, is the agent of big business in its struggle to retain economic and political power in diseased and dying capitalist states. It is the unconcealed rule of monopoly capitalism.

Wherever it puts in an appearance it arises at first as a lower middle class phenomena superimposing itself upon the capitalist class. The reason why the lower middle class is of such vital concern wherever fascism is mentioned, is because at the present time this same lower middle class—along with the working masses, has been driven relentlessly to the wall by the accumulated power of big business. The latter is the ruling class in modern society.

But today, fascism, no matter how willing it might be, can no longer serve the economic interest of the larger section of the lower middle class because the existing industrial structure will not permit it. The technological set-up of modern society is such that it is well nigh impossible to translate lower middle class economic interests into action. Therein is the rub as well as the basic con-

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Government's Exhibit No. 1—(Continued)

tradiction of fascism. For, were it to attempt to reform or to rejuvenate the economic power of the lower middle class, implant some monkey glands, so to speak, it will find itself at variance and out of harmony with the interests of big business. Why? Because the economic structure of contemporary society is definitely built about an axis of mass production. To rebuild that structure about an orbit of small production would mean of necessity the tearing down of the whole technological structure, of this our society. Such a step in its turn would result in its complete economic paralysis. The fact that modern industry has introduced mass production in almost everything—from the manufacturing of toothbrushes to that of the automobile—spells the conclusion that in the struggle between two mutually antagonistic industrial processes, the small shop-keeper has no more chance of ultimate survival than the small individual store-keeper. Thus the very economic order of present day society will prevent fascism from injecting political restoratives into the lower middle class in order to revive its fast dwindling powers.

Failing thus in its primary function, does it mean that fascism will confess its impotence and capitulate—give up its ghost so to speak? Not at all.

The experience and history of the past few years has proved to us that wherever a clash of interests such as outlined above occurs, fascism in the main considers itself the dutiful servant of big business, and it is the latter which provides the financial sup-

Government's Exhibit No. 1—(Continued)

port to necessary [11] for the establishment and entrenchement of fascism. It is true fascism makes gestures to discipline the operations of big business in the interests of the corporate state—which means the creation of a national capitalist state to take the place of the hither-to pseudo-democratic-individualistic, capitalist state. This in itself is a confession that something is "rotten in Denmark". But the national capitalist state contains to no less a degree the inner contradictions of the more traditional capitalist society. And these inner contradictions, when carried to their logical conclusions, lead inevitably to privation and misery on the one hand, or to imperialism, aggression and war on the other hand. That war is inevitable, we may gather from the very apostle of fascism, Benito Mussolini, who feels that "fascism . . . . . believes neither in the possibility nor the utility of perpetual peace. It thus repudiates the doctrine of pacifism born of renunciation of the struggle and an act of cowardice in the face of sacrifice. War alone brings up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it."

What on the other hand is the antagonist of fascism? The collectivist state, according to its proponents, in brief, proposes that, "all resources, all lands and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication, should be, not private property but the common property of all

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Government's Exhibit No. 1—(Continued)

those who work." It further proposes that society should consist only of those who work, which means that all members of society should be socially useful human beings . . . . . that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites . . . . . that production and distribution of goods be planned scientifically to avoid anything resembling the crises of capitalist society, that the society established be intent on developing the machine technique, mass production, and a minute division of labor to the fullest possible extent . . . . . ."

But how is mankind to reach this state of practical idealism? The collectivist believes that it is necessary for society to go through four stages of development in the path from capitalism to socialism.

First of all, there must be the stage of the bourgois capitalism, which is characterized by private property, free enterprise and competition. This state of being, because of its inner defects and contradictions, must give way to another, "the change to be expediated and effected by the strong, determined, class-conscious part of the working class—" all workers or producers, or those laboring by brain or brawn—when a favorable opportunity presents itself.

This achieved, there is to follow the second stage—"the dictatorship of the masses." Realizing that since not all the workers are capable in managing government and industry, there must be an intelli-

Government's Exhibit No. 1—(Continued)

gent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals.

The second stage is to give way to the socialist society—the third phase of collectivism. During this, "all means of production [12] will be in the hands of the democratically governed state. The masses of workers will now be in control. Wages will still be paid on the basis of efficiency or productivity, with some prevailing differences in wages as a result." Since there will still be considerable centralization of economic and political control, unless all vestiges of class opposition have been eliminated, this third stage is very much akin to state socialism.

The last and final phase of this societal change will be the collectivist society—the ultimate goal. This time, coersive authority will have disappeared, every one voluntarily participating in the cooperative commonwealth. This will be the real "classless" society, with no wage system, no price, no money—a system based upon the principle of "from each according to his ability, to each according to his need." Thus, cryptly put, will evolve the state known as Collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefullness, its mission, its place in history of economic growth of mankind.

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Government's Exhibit No. 1—(Continued)

It is man's ultimate goal. It is the panacea for which he has been striving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this earth now, and not "by and by when you die."

These doctrines have come to the forefront of late more than before because of the conditions we have been facing in the last half dozen years in particular. And no audience needs to be told of the terrible thing these six or seven years of depression have been. It is bad enough in physical suffering but it is worse in mental and spiritual effect. It dims man's hope, it starves man's faith in human institutions it puts fear and dread in hearts. It questions the advisibility of living all-together. The pathetic thing about these years of misery is its mockery of our common sense. In the words of President Roosevelt, "millions are homeless in cities of vacant homes, ill fed before full granaries, ill clothed in the presence of abundance and cut off from the chance to work for the other millions who are suffering for the want of their services." It does not make sense. It is more like the spell of black magic from a fairy book story.

But in this hard-boiled age we can't permit ourselves to be taken up with fairy book stories. We must approach the problems as they face us. We must hack our way out of trouble by our own efforts. No good fairy is fluttering around on the horizon to get us out of the difficulties.

In conclusion, may I say that the choice we are

Government's Exhibit No. 1—(Continued)

asked to make lies before us. If an economic system is to be judged on the basis of a worth-while standard of living for every man, woman and child under it, then we must choose accordingly. On that basis I cannot see any hope for economic planning in Italy, Germany, Japan and other such fascist countries. Nor do I see too much hope for this same economic planning in England, the United States, France and other democratic and pseudo-democratic states. Why? In all these instances unrestrained capitalism is in the saddle, and economic planning for all is wholly inconsistent with, and impossible under, unchecked capitalism. On the other hand, this study and reflection could lead one to conclude that progress, human well being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization.

The sentiment expressed in the following lines of verse seems very apropos: [14]

"Sedition"

By

Edmund Vance Cooke

You cannot salt the eagle's tail,
  Nor limit thought's dominion.
You cannot put ideas in jail;
  You can't deport opinion.

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Government's Exhibit No. 1--(Continued)

If any cause be dross and lies,
Then drag it to the light;
Out in the sunshine Evil dies,
But fattens on the Night.

You cannot make a Truth untrue
By dint of legal fiction.
You cannot prison human view,
You can't convict conviction.

For tho by thumbscrew and by rack,
By exile and by prison,
Truth has been crushed and palled in black,
Yet Truth has always risen.

You cannot quell a vicious thought,
Except that thought be free;
Gag it, and you will find it taught
On every land and sea.

Truth asks no favor for her blade
Upon the field with Error,
Nor are her converts ever made
By threat of force and terror.

You cannot salt the eagle's tail,
Nor limit thought's dominion.
You cannot put ideas in jail;
You can't deport opinion. [15]

United States District Court, Southern District of California, Central Division

No. 126,536

In the Matter of the Petition of SHULIM WIXMAN for Naturalization.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT DENYING PETITION FOR NATURALIZATION.

Upon consideration of the petition for naturalization of Shulim Wixman and of the objections by the Government to the admission of said Shulim Wixman as a citizen of the United States, and after hearing thereon in open court, petitioner being represented by Lee Gallagher, Esq. and Herbert Ganahl, Esq., and the Government being represented by Frank J. Burns, Esq., and upon submission of said petition and cause, the court delivered an oral opinion from the bench, which opinion it was stipulated by petitioner's counsel and by the Government would suffice as the Findings of Fact and Conclusions of Law in such contested naturalization proceeding; and the court having found the facts in such proceedings as stated in said oral opinion from the bench, and having concluded that the petitioner Shulim Wixman had failed to establish his burden of proof of attachment to the principles of the Constitution of the United States and a favorable disposition to the good order and happiness of the United States, and the court having sustained the objections of the Government to the

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admission of said Shulim Wixman to citizenship of the United States, now, therefore, in accordance with the evidence and in accordance with the Findings of Fact and Conclusions of Law heretofore made and entered herein as aforesaid.

It is accordingly ordered that the petition of Shulim Wixman for naturalization be and hereby is denied. Exceptions noted and allowed to said petitioner.

Dated this 7th day of February, 1947.

/s/ PAUL J. McCORMICK,
United States District Judge.

Judgment entered Feb. 7, 1947.
Docketed Feb. 7, 1947.
C. O. Book 41, Page 577.

EDWARD L. SMITH,
Clerk,

By /s/ E. N. FRANKENBERGER,
Deputy.

[Endorsed]: Filed Feb. 7, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Samuel Morris Wixman, also known as Shulim Wixman, petitioner above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the judg-

ment denying the petition for naturalization entered in this action on February 7, 1947.

WIRIN, KIDO & OKRAND,

By /s/ FRED OKRAND,
Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed March 19, 1947.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the District Court of the United States in and for the Southern District of California:

Appellant hereby designates for the record on appeal in the above matter the entire record which you are requested to prepare.

Said record consists of the following:

1. Petition for Naturalization;
2. Reporter's Transcript of proceedings (orginal and one copy of which is filed herewith);
3. Exhibit 1;
4. Judgment entered February 7, 1947;
5. Notice of appeal;

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6. This Designation.

Dated: April 17, 1947.

WIRIN, KIDO & OKRAND,
By /s/ FRED OKRAND,
Attorneys for Appellant.

Received copy this 17th day of April, 1947.
/s/ RONALD WALKER,
Asst. U. S. Atty.

[Endorsed]: Filed April 18, 1947.

[Title of District Court and Cause.]

ORDER DIRECTING CLERK TO MAKE CERTIFICATION OF NATURALIZATION RECORDS.

It appearing to the Court that the above named petitioner has filed notice of appeal from the order entered February 7, 1947, denying his application for naturalization and that the Clerk is now in the process of making up the record on appeal for certification;

And it appearing further that under section 341(e) of the Nationality Act of 1940 (Title 8, U. S. C. A. 741(e) the Clerk is prohibited from certifying certain naturalization records without an order of Court;

It is ordered that the Clerk of this court issue his certification of the petition for naturalization filed in the above entitled matter for the purpose of perfecting the record on appeal to the United

States Circuit Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 21st day of April, 1947.

PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed Apr. 21. 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 21 inclusive contain full, true and correct copies of Petition for Naturalization; Government's Exhibit 1; Findings of Fact, Conclusions of Law and Judgment Denying Petition for Naturalization; Notice of Appeal; Designation of Record and Order Directing Clerk to Make Certification of Naturalization Record which, together with copy of reporter's transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $6.60 which sum has been paid to me by appellant.

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Witness my hand and the seal of said District Court this 24 day of April, A. D. 1947.

[Seal] EDMUND L. SMITH,
Clerk,

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Endorsed]: No. 11599. United States Circuit Court of Appeals for the Ninth Circuit. Samuel Morris Wixman, also known as Shulim Wixman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 28, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11599.

SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Appellant herewith designates as his points on appeal, the following:

1. The denial of the petition and the judgment thereon, denies to the appellant his right to freedom of speech within the meaning of the First Amendment to the United States Constitution.

2. The denial of the petition and the judgment thereon by the District Court abridges appellant's right to freedom of thought and freedom of opinion within the meaning of the "clear and present danger" rule.

3. The denial of the petition and the judgment thereon by the District Court is not supported by the evidence.

Dated: April 30, 1947.

WIRIN, KIDO & OKRAND,
By /s/ FRED OKRAND,
Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 2, 1947.

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United States Circuit Court of Appeals for the Ninth Circuit

No. 11599.

SAMUEL MORRIS WIXMAN, also known as SHULIM WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER GRANTING PETITION THAT REPORTER'S TRANSCRIPT OF TESTIMONY BE NOT PRINTED

Upon consideration of the petition of appellant that he be permitted to proceed on this appeal by printing the clerk's transcript, and that the reporter's transcript of testimony be considered in its original form, and of the opposition of counsel for appellee thereto, and good cause therefor appearing, It Is Ordered that said application be, and hereby is granted, and that appellant is permitted to proceed on the appeal herein upon a typewritten reporter's transcript of record, and printed clerk's transcript.

Dated: San Francisco, Calif., June 13, 1947.

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit Judge.

[Endorsed]: Filed June 17, 1947.

No. 11599

IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday,
March 16, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. A. L. Wirin, counsel for appellant, and by Mr. Paul Fitting, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday,
May 4, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,599

May 4, 1948

SHULIM WIXMAN, Also Known as SAMUEL MORRIS WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the District Court of the United States for the Southern District of California, Central Division

Before: Mathews, Bone and Orr,
Circuit Judges.

Mathews, Circuit Judge.

OPINION

This appeal is from a judgment denying a petition for naturalization filed by appellant, Shulim Wixman, also known as Samuel Morris Wixman, who was born in Russia on March 25, 1900, and entered the United States under the name of Scholem Wieseman on July 16, 1911. The petition was filed on September 25, 1945, and was denied on February 7, 1947.

The petition was filed pursuant to the Nationality Act of 1940, 8 U.S.C.A. § 501 et seq. Subsection (a)

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of § 307 of the Act, 8 U.S.C.A. § 707, provides that, with inapplicable exceptions, "No person * * * shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Appellant's petition stated: "I am, and have been during all of the periods required by law,[1] attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States." On the ground that appellant was not so attached or so disposed, appellee, the United States, objected to his naturalization.

Pursuant to § 334 of the Act, 8 U.S.C.A. § 734, a final hearing on appellant's petition was had in open court before a judge thereof, commencing on January 24, 1947, and ending on February 5, 1947. The witnesses—31 for appellant and 9 for appellee—were examined under oath before and in the

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[1]Meaning, obviously, the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707.

presence of the court and judge. On the issue as to whether appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707,[2] was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, the evidence was conflicting. There was evidence tending to show that he was so attached and so disposed and evidence tending to show that he was not so attached or so disposed. The court resolved the conflict in favor of appellee and against appellant. Hence the judgment here appealed from.

As required by our Rule 19 (6),[3] appellant, upon filing the record in this court, filed with the clerk a statement of the points on which he intended to rely on the appeal and designated the parts of the

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[2]In this case, the periods referred to included the period from September 25, 1940, to September 25, 1945, and the period from September 25, 1945, to February 5, 1947.

[3]Rule 19(6) provides: "The appellant shall, upon the filing of the record in this court, in all cases, * * * file with the clerk a concise statement of the points on which he intends to rely on the appeal, and designate the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement and designation. The adverse party, within 10 days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; * * * If parts of the record shall be so designated by one or both of the parties, * * * the clerk shall print those parts only; and the court will consider nothing but those parts of the record and the points so stated. * * *"

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record which he thought necessary for the consideration thereof. Three points were stated. Point 1 is that "The denial of the petition and the judgment thereon denies to the appellant his right of freedom of speech within the meaning of the First Amendment to the United States Constitution." Point 2 is that "The denial of the petition and the judgment thereon by the District Court abridges appellant's right to freedom of thought and freedom of opinion within the meaning of the 'clear and present danger' rule." There is no merit in either of these points. The denial of the petition does not, nor does the judgment thereon, deny to appellant his right to freedom of speech or abridge his right to freedom of thought or freedom of opinion. None of these rights is in any way affected by the denial of the petition or the judgment thereon.

Point 3 is that "The denial of the petition and the judgment thereon by the District Court is not supported by the evidence." There is no merit in this point. The denial of the petition and the judgment thereon are supported by substantial evidence—evidence tending to show that appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States.

This being a naturalization proceeding—a proceeding for admission to citizenship—the court was not required to "find the facts specially," as would

have been required had this been a civil action.[4] The court did, however, indicate its findings in an oral opinion delivered from the bench on February 5, 1947. In that opinion, the court held, and properly so, that appellant had the burden of proving that, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.[5] The court then stated, in the same opinion, that it did not believe that it could conclude that appellant had sustained his burden of proof. In the judgment, entered two days later, the court stated that it had concluded that appellant had not "established" his burden of proof. Thus, in effect, the court found that appellant, during the periods referred to in subsection (a) of § 307 of the Act, 8 U.S.C.A. § 707, was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States.

Remembering, as we must, that the evidence was conflicting; that the court below had the advantage, which we have not had, of hearing, seeing and observing the witnesses; that appellant's burden of

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[4]See Rules 52(a) and 81(a)(2) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following § 723c.

[5]United States v. Schwimmer, 279 U.S. 644; United States v. Macintosh, 283 U.S. 605; Lakebo v. Carr, 9 Cir., 111 F. 2d 732; Allan v. United States, 9 Cir., 115 F. 2d 804.

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proof was a heavy one; and that doubts were required to be resolved in appellee's favor,[6] we cannot say that the finding was wrong.

Denaturalization cases[7] and deportation cases[8] cited by appellant are not in point here, for this is neither a denaturalization case nor a deportation case.

Judgment affirmed.

[Endorsed]: Opinion. Filed May 4, 1948. Paul P. O'Brien, Clerk.

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[6]United States v. Manzi, 276 U.S. 463; United States v. Schwimmer, supra; United States v. Macintosh, supra.

[7]Schneiderman v. United States, 320 U.S. 118; Baumgartner v. United States, 322 U.S. 665.

[8]Bridges v. Wixon, 326 U.S. 135; Delgadillo v. Carmichael, 332 U.S. 388; Fong Haw Tan v. Phelan, 333 U.S. 6.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11599

SHULIM WIXMAN, etc.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered May 4, 1948.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday,
June 5, 1948

Before: Mathews, Bone and Orr,
Circuit Judges.

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed June 3, 1948, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

June 5
July 5-30
Aug. 5-61
Sep. 5-92
Sep. 4-91

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-five (45) pages, numbered from and including 1 to and including 45, together with original typewritten reporter's transcript to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 22d day of June, 1948.

[Seal] PAUL P. O'BRIEN,
Clerk.